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12 UNITED STATES DISTRICT COURT
13 WESTERN DISTRICT OF WASHINGTON
14 AT SEATTLE

15 JENNIFER TAYLOR,

16 Plaintiff,

17 v.

18 KAHNE CORPORATION; and PORTAC,
19 INC.,

20 Defendants.

21 Case No. C05-0243RSL

22 ORDER GRANTING MOTION TO
23 AMEND COMPLAINT

24 **I. INTRODUCTION**

25 This matter comes before the Court on plaintiff's motion for leave to file amended
26 complaint (Dkt. #20). Plaintiff seeks to amend the complaint to conform to the evidence
27 adduced in discovery. Plaintiff does not seek to add or remove claims for relief but rather seeks
28 to alter the factual basis for her original claims. Defendants oppose the motion, arguing that the
proposed amendment would be prejudicial.

II. DISCUSSION

Leave to amend “shall be freely given when justice so requires.” Fed. R. Civ. P. 15(a). The Ninth Circuit has stated that the policy of allowing amendments “should be applied with ‘extreme liberality.’” DCD Programs, Ltd. v. Leighton, 833 F.2d 183, 186 (9th Cir. 1987) (citations omitted). The Court should consider four factors in deciding whether to grant leave to amend: “bad faith, undue delay, prejudice to the opposing party, and the futility of amendment.” DCD Programs, 833 F.2d at 186. Of those four factors, defendants note that the most important factor to consider is whether prejudice would result to the non-movant. (Dkt. # 21-1) citing Genentech, Inc. v. Abbott Labs., 127 F.R.D. 529 (N.D. Cal. 1989). Whether a proposed amendment is prejudicial requires an examination of the facts of each case. Zenith Radio Corp. v. Hazeltine Research, 401 U.S. 321, 330 (1971).

Defendants argue that they would be prejudiced if the amendment were allowed at this stage because most of the discovery has already occurred and witnesses would have to be redeposed to address plaintiff's amended complaint. In Genentech, cited by defendants in support of their argument, plaintiff sought to amend its complaint and defendant objected in precisely the same manner as defendants here.

In the instant case, defendant contends that several of plaintiff's proposed amendments would unduly prejudice the defendant. Defendant asserts that the addition of the amendments in issue would require it to depose numerous witnesses across the country who have been previously questioned and would necessitate additional document searches and written discovery. Defendant further argues that additional discovery will postpone the trial date.

Genentech, Inc., 127 F.R.D. at 531. The court held “Such delays do not constitute undue prejudice to the defendant.” Id. It would be incongruous for this Court to apply the reasoning of Genentech without arriving at the same result.

Defendants argue that the Ninth Circuit has ruled that “any amendment which requires extensive and costly discovery, with the plaintiff presenting no valid reason for the failure to include the original cause of action in the original Complaint, constitutes prejudice which supports the denial of a motion to amend.” Defendants Opposition at 4 (Dkt. # 21). In support

1 of this statement defendants cite Jordan v. County of Los Angeles, 669 F.2d 1311 (9th Cir.
2 1982), vacated on other grounds, 459 U.S. 810 (1982). In Jordan, however, the defendants
3 would have been required to conduct expensive discovery in order to respond to the amended
4 complaint because the amendment raised “substantial issues of state law not closely connected”
5 with plaintiff’s other federal claims. Jordan, 669 F.2d at 1324. Moreover, the Jordan court held
6 that a denial of a motion to amend is allowed where “the party seeking amendment knows or
7 should know of the facts upon which the proposed amendment was based but failed to include
8 them in the original complaint.” Id.

9 In the present case, the amendment does not raise any substantial issues not closely
10 connected with the original complaint. In fact, the issues raised in the amended complaint have
11 been the subjects of discovery throughout the litigation and have been opined upon by
12 defendant’s experts. See, e.g., Reply Ex. G & H. It is clear that plaintiff did not know all the
13 specific facts upon which her amended complaint rests prior to discovery. Furthermore, the
14 Court is not convinced that witnesses will need to be redeposed to address the new claims as the
15 deposition testimony appears to have covered much of that ground already. The preliminary
16 dispositive motions from Taylor and Kahne (Dkt. ## 25, 27) present no significant disconnect as
17 to the salient issues regarding the Kahne’s alleged negligence. Moreover, even if witnesses do
18 need to be redeposed, that does not constitute undue prejudice according to the court’s holding
19 in Genentech.

20 As a final matter, although plaintiff’s motion is timely, defendants’ request for an
21 extension of discovery deadlines is reasonable under the circumstances. Defendants will have
22 an additional month to conduct further depositions if necessary. The trial date, however, will
23 remain as originally set and plaintiff will not be required to bear the cost of redepositing witnesses
24 as requested by defendant.

25 **III. CONCLUSION**

26 For the foregoing reasons, the Court GRANTS plaintiff’s motion for leave to amend her
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1 complaint (Dkt. #20-1). The following deadlines are modified:

2 Discovery completed by February 1, 2006
3 Further dispositive motions filed by February 28, 2006
4 Settlement conference per 39.1(c)(2) held no later than March 16, 2006

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6 DATED this 29th day of December, 2005.

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10 Robert S. Lasnik
United States District Judge